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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FANNY MAQUAIRE and LAURENT LE-FAUCHEUR

Appeal 2008-5763
Application 09/779,210
Technology Center 2600

Decided: December 1, 2008

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI,
and CARLA M. KRIVAK, *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the final rejection of claims 1 through 14.

We affirm the Examiner's rejections of these claims.

INVENTION

The invention is directed towards a mobile telecommunication system which has voice activated dialing and a caller identification feature that plays an audio file. Both systems use the same voice audio file. See page 3 of Appellants' Specification. Claim 1 is representative of the invention and reproduced below:

> 1. A mobile communications device comprising:
>
> a database of telephone numbers, one or more of the telephone numbers associated with respective audio files and voice templates;
>
> voice activated dialing circuitry for dialing one of the telephone numbers in said database in response to identifying a match between an audio input from a user and one of said voice templates, and for playing the associated audio file in response to said match; and;
>
> caller identification circuitry for detecting an originating telephone number in said database associated with an incoming telephone call and, if said originating telephone number is associated with an audio file, playing the associated audio file.

REFERENCES

Barkat	US 5,805,672	Sep. 8, 1998
Flannery	US 2002/0086711 A1	Jul. 4, 2002
Van Der Salm	WO 96/27974	Sep. 12, 1996

REJECTIONS AT ISSUE

The Examiner has rejected claims 1, 4 through 10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Van Der Salm in view of Barkat. The Examiner's rejection is on pages 3 through 5 of the Answer[1].

The Examiner has rejected claims 2, 3, 11, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Van Der Salm in view of Barkat and Flannery. The Examiner's rejection is on pages 5 and 6 of the Answer

ISSUES

Appellants argue on page 5 of the Brief[2] that the Examiner's rejection of claims 1, 4 through 10, 13, and 14 under 35 U.S.C. § 103(a) is in error. Appellants assert that there is no suggestion to combine the references. Appellants' arguments group these claims together.

Thus, with respect to the rejection of claims 1, 4 through 10, 13, and 14, Appellants' contentions present us with the following issue. Have Appellants shown the Examiner erred in combining the teachings of Van Der Salm and Barkat? We select independent claim 1 as representative of these claims.

With respect to the rejection of dependent claims based upon Van Der Salm in view of Barkat and Flannery, Appellants state that they rely upon the patentability of the independent claims to show the rejection is in error.

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[1] Throughout the opinion, we make reference to the Answer, mailed June 5, 2007, for the respective details thereof.

[2] Throughout the opinion, we make reference to the Brief, received March 1, 2007, for the respective details thereof.

Thus, Appellants' contentions with respect to the rejection of claims 2, 3, 11, and 12 present us with the same issue as claim 1.

PRINCIPLES OF LAW

On the issue of obviousness, the Supreme Court has stated that "the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Further, the Court stated "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1739.

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. . . . [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 1740. "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent's claims." *Id.* at 1742.

FINDINGS OF FACT

1. Van Der Salm teaches a telephone which produces different ring tones based upon signaling information relating to the identity of the party calling. Abstract.
2. Van Der Salm teaches several embodiments where the ring tones are generated in different ways. One embodiment includes a ring tone which provides a spoken name of the calling party. This spoken ring tone can be generated by a synthesized voice or by a digital recording of a piece of speech. Van Der Salm 9:19-28 and 18: 16-31.
3. The phone includes a memory that stores data relating the identity of the party and is used to form the dedicated ring tone (i.e., the memory stores an association between caller and ringtone). Van Der Salm 16:14-24.
4. Barkat teaches a device which allows for voice activated dialing of a cellular telephone which is useful in a hands free applications. The device includes a speech input/output device and a speech processor to recognize spoken words. Abstract.
5. The speech processor is connected to a storage unit which stores information about words it is trained to recognize. This information is used by the processor to determine if there is a match between a spoken command and a trained word, if there is, an indication is provided to the microcomputer. The microcomputer provides signals to the phone to dial the number. Barkat col. 4, ll. 7-19, and col. 3, ll. 43-50.

6. The training of the words includes the telephone numbers to dial when the name is recognized (thus the storage unit includes both data on the spoken command and the telephone number associated with the command). Barkat, col. 4, ll. 46-55.
7. When Barkat's device is being used for voice activate dialing, the user says a command, when the processor finds a match it plays back the recognized name (echoes back the name in the storage unit which is selected as the match). Col. 5, ll. 23-25.
8. Barkat teaches that the system is to be used in a separate device from the phone, but recognizes that it is known in the art that some phones have the voice dialer integrated into the phone. Col. 1, ll. 27-30.

ANALYSIS

Appellants' arguments have not persuaded us that the Examiner erred in combining the teachings of Van Der Salm and Barkat. Claim 1 recites a mobile communications device which has a database of telephone numbers and voice files. Claim 1 further recites that the voice files are used for identification of a match for voice activated dialing, and to provide identification of the caller when a call is received. The Examiner has found that Van Der Salm teaches a telephone which has a memory storing information relating caller identification with an audio file. Answer 3. We find that the evidence supports this finding by the Examiner. Facts 2 and 3. The Examiner finds that Barkat teaches a voice activated dialing system which uses a match between a user spoken command and a voice file to dial the number of a person associated with the command. Answer 4. We find that the evidence of record supports this finding by the Examiner. Facts 4-6.

Based upon these findings, the Examiner has concluded that the skilled artisan would have combined the teachings of the references into a phone which has voice activated dialing (using the voice file) and an audible indication (using the voice file) of incoming calls to the phone. The Examiner reasons that the combination "has the advantage of providing flexibility and convenience to a user by allowing the user to conduct hands-free telephone communication." Answer 4. We concur with the Examiner's conclusion. We consider that adding the voice activated dialing of Barkat to Van Der Salm's phone with custom ring tones based upon the caller, to be nothing more than the use of a known solution to solve a known problem. Here the evidence shows that it was known to use voice activated dialing as it is useful in hands free applications. Fact 4. Further, the combination does nothing more than yield the predictable result of a phone having voice activated dialing and that provides a unique ring tone (the spoken name) for selected callers.

Appellants' argument that Van Der Salm emphasizes avoiding a large memory containing ring tones does not persuade us that the combination is in error. As discussed above, Van Der Salm teaches several embodiments and in one the ring tones are voice files stored in memory. Fact 2. Further, the desire to avoid large memory would further support the Examiner's conclusion that it would have been obvious that the two systems share the same database of phone numbers and voice files. Appellants' additional argument that Barkat is not directed to a phone, but to an accessory, has not persuaded us that the combination is in error. We find that Barkat teaches how a voice activated dialing system operates, while the disclosure is

directed to an accessory separate from the phone, it also identifies that it was known at the time that such systems are employed within the phone. Fact 8.

For the above reasons Appellants' arguments have not persuaded us that the Examiner erred in combining the teachings of Van Der Salm and Barkat. As this was the only issue presented with respect to the Examiner's rejection of: claims 1, 4 through 10, 13, and 14 as being unpatentable over Van Der Salm in view of Barkat, and of claims 2, 3, 11, and 12 as being unpatentable over Van Der Salm in view of Barkat and Flannery, we sustain both of these rejections.

ORDER

The decision of the Examiner to reject claims 1 through 14 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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